

TENNESSEE BOARD OF CHIROPRACTIC EXAMINERS

DATE: May 11, 2006

TIME: 9:00 A.M.

BOARD MEMBERS

PRESENT: Andrea Selby, D.C., Chair
Barry Kelton, D.C.
Michael Massey, D.C.
Debe Williams, D.C.
Craig Ratcliff, D.C.
Sheila Fitzgerald, Citizen Member

BOARD MEMBERS

ABSENT: Linda Kindrick, Citizen Member

STAFF PRESENT: Sherry Owens, Board Administrator
Bob Kraemer, Advisory Attorney
Ernest Sykes, Advisory Attorney
Robbie Bell, Director
Jerry Kosten, Rules Coordinator
Barbara Maxwell, Administrator Director

Dr. Selby, board chair, called the meeting to order at 9:05 A.M. A sufficient number of board members were present to constitute a quorum.

Review Minutes

Upon review of the February 28, 2006 board meeting minutes, Dr. Ratcliff made a motion, seconded by Dr. Kelton to approve the minutes as written. The motion carried.

Contested Case hearing for Roger Byrd, DC

Ms. Hodge, Litigating Attorney, informed the board that the hearing for Roger Byrd, DC has been continued.

Consent Order for Michael Trahin, D.C.

Ms. Hodge presented a consent order to the board for Michael Trahin, D.C. Ms. Hodge said Dr. Trahin assaulted Dr. James Deaton, D.C. at his office resulting in a Class A misdemeanor in the Criminal/Circuit Court of Lincoln County, Tennessee.

Ms. Hodge said as a result of the misdemeanor, Dr. Trahin was sentenced to eleven (11) months and twenty-nine (29) days probation, ordered to successfully complete an anger management course and pay restitution to Dr. Deaton in the amount of \$662.13.

Dr. Williams asked Ms. Hodge if Dr. Deaton was physically harmed. Ms. Hodge said the information in the consent order is what Dr. Trahin agreed to and she could not go into detail.

Upon discussion, Dr. Kelton made a motion, seconded by Dr. Williams, to accept the consent order as written. The motion carried.

Conflict of Interest Policy

Mr. Sykes discussed the Conflict of Interest Policy asking board members to notify him if a member has even a potential conflict in matters brought before the board to determine if that board member should recuse him/herself from the proceedings.

Office of General Counsel Report

Mr. Sykes said the rules amending the assessment of costs under disciplinary actions became effective April 17, 2006; the rules amending continuing education and x-ray became effective March 21, 2006; and the new rules pertaining to criminal background checks and acupuncture fees became effective May 21, 2006.

Mr. Sykes said the rule amending clinical acupuncture was sent to the Attorney General November 21, 2005, the rule amending stays, reconsiderations and CPLLC's was sent to the Attorney General November 21, 2005 and the rule amending chiropractic records and continuing education were sent to the Attorney General March 16, 2006, where they remain.

Mr. Sykes stated there are four (4) open disciplinary cases pertaining to the Board of Chiropractic Examiners in OGC.

Investigative Report

Ms. Phelps reviewed the Investigative Report stating there are currently thirteen (13) complaints against Chiropractic Examiners. Ms. Phelps stated their office closed nineteen (19) complaints, eleven (11) with no action, four (4) with letters of concern; two (2) with letters of warning and two (2) referred to OGC.

Ms. Phelps stated the complaints consist of unprofessional conduct, unlicensed practice, care of services, advertising and other.

Disciplinary Report

Ms. Phelps reviewed the Disciplinary Report which lists three (3) Chiropractic Examiners and one (1) Chiropractic X-ray Technologist/Chiropractic Therapy Assistant currently being monitored for disciplinary action to assure they are complying with the stipulations of the order.

Ms. Phelps reviewed the summary of currently monitored practitioners which lists all Chiropractic Examiners, Chiropractic X-Ray Technologist and Chiropractic Therapy Assistants who have been disciplined by the board.

Financial Report

Ms. Owens said the Financial Report indicates the board has a cumulative carryover of \$65,458.69 as of June 30, 2005. Ms. Owens stated there will be new report for the next meeting.

Administrative Report

Ms. Owens discussed the Administrative Report which lists the number of all active, retired and failed to renew Chiropractic Examiners, Chiropractic X-ray Technologist and Chiropractic Therapy Assistants.

Ms. Owens said between February 18, 2006 and May 2, 2006 thirteen (13) Chiropractic Examiners, one (1) Chiropractic X-ray Technologist and two (2) Chiropractic Therapy Assistants renewed their licenses online.

Ms. Owens said the department will be moving to Metro Center June 14, 2006 and the next board meeting will be held at the Maxwell House if the meeting room is not available at French Landing.

Report from Jerry Kosten, Rules Coordinator

Mr. Kosten said he conducted a rulemaking hearing April 26, 2006 to amend Rule 0260-3-4(1)(e) which allows CXT's to take the examination prior to successfully completing the 1,040 hours of clinical internship.

Dr. Selby asked if x-ray technologists with a medical x-ray license have to retake the examination.

Ms. Owens said reciprocity allows x-ray technologists with a current medical x-ray license to obtain a chiropractic x-ray technologist license without retaking the examination.

Upon discussion, Dr. Williams made a motion, seconded by Dr. Massey, to approve the amendments as written. A roll call vote was conducted and all board members voted in the affirmative.

Letter from Ernie Sykes to Dr. John McStay

Ms. Sykes said he sent an advisory private letter ruling to Dr. John McStay pursuant to T.C.A. §63-4-103(4) which empowers the board to issue advisory private letter ruling to inquiring licensees. Mr. Sykes said Dr. McStay submitted a petition dated April 13, 2006 requesting an advisory private ruling to the question: Would using targeted direct mail to contact accident

victims within the first 30 days after such persons were involved in an accident, violate any General Rules Governing Chiropractic Examiners or any statute governing Chiropractors?

Mr. Sykes opined that contacting trauma victims by targeted direct mail within thirty (30) days of an accident qualifies as advertisement which involves coercion, duress or harassment. Mr. Sykes further stated that the board may in its discretion hold that such practice violates any or all of these provisions: T.C.A. §63-4-114(4), (5) and (12), and Rule 0260-2-.20(4)(d) and (e).

Mr. Sykes said if the board accepts this memorandum as its own ruling, he will prepare a letter and send it out or the board can revise or reject this ruling.

Mr. Sykes stated that by statute the ruling does not set a binding precedent to the board as this will only apply to Dr. McStay.

Mr. Sykes said Dr. McStay presented an argument that using targeted direct mail is not telemarketing.

Mr. Sykes said although the rule does not specifically address the issue of targeted direct mail other statutory and regulatory provisions such as T.C.A. §63-4-114(5) does prohibit targeted direct mail and is a violation of the Practice Act and the rules of the Board of Chiropractic Examiners.

Upon discussion, in which the board stated they are in total agreement with Mr. Sykes opinion on this issue, Dr. Kelton made a motion, seconded by Dr. Massey, to accept the advisory private letter ruling for Dr. John McStay. The motion carried.

Discuss Federation of Chiropractic Licensing Boards (FCLB) and CINBAD

Dr. Massey said it was brought to his attention that the board is not utilizing FCLB's CINBAD and suggested the board join and pay dues to FCLB.

Mr. Kelton stated he attended a FCLB meeting and obtain information on what other states are doing in the field of chiropractic.

Dr. Massey said he is the voting delegate for FCLB and they have one annual meeting.

Upon discussion, Dr. Massey made a motion, seconded by Dr. Ratcliff, to join FCLB. The motion carried.

Discuss Legislation

Mr. Sykes said SB-HB3205 pertaining to acupuncture passed legislation and will be signed by the Governor.

Mr. Sykes stated that Chiropractic Physicians can engage in acupuncture but cannot hold themselves out to be an acupuncturist without successfully completing 250 hours of acupuncture education.

Ms. Owens said she has amended the chiropractic applications to include acupuncture.

Ms. Owens stated she received a call from a chiropractic physician asking if he can perform needle sticks in his office.

Mr. Sykes said nothing in T.C.A. §63-4-101(a) is construed to allow chiropractic physicians to perform venipuncture and that he will be happy to present a legal analysis of venipuncture to the board at the next board meeting.

Continuing Education Course Review

Upon review of the course **Inflammation: The Silent Epidemic Seminar**, by Dr. Bruce Bond, Dr. Williams recommended the course for continuing education for Chiropractic Examiners.

Upon review of the course **Basic Life Support Professional Healthcare Provider Course**, by ConsevCare, for Chiropractic Therapy Assistants, Dr. Selby recommended the three hour CPR course for continuing education for Chiropractic Therapy Assistants.

Upon review of the course **Chiropractic Therapy Assistant Seminar**, by Dr. Lance Silverman, Dr. Kelton recommended the course for continuing education for Chiropractic Therapy Assistants.

Upon review of the course **Integrating Chiropractic and Posture Rehab Exercise**, by Dr. Steven P. Weiniger, Dr. Massey recommended the course for continuing education for Chiropractic Therapy Assistants.

Upon review of the course **Coding, Compliance & Documenting Medical Necessity in the Chiropractic Practice**, by the Texas Chiropractic Association, Dr. Ratcliff recommended the course for continuing education for Chiropractic Examiners.

Dr. Williams made a motion, seconded by Dr. Kelton, to accept the aforementioned continuing education courses as recommended. The motion carried.

Review Correspondence

Upon review of the letter from Dr. Scott Frasier stating he lost his wife in 2005 after a prolonged illness and was unable to obtain continuing education, Dr. Williams made a motion, seconded by Dr. Kelton, to waive the 2005 hours and \$600 fine. The motion carried.

File Review

The board reviewed the application of Justin Brown who was convicted of a DUI while in chiropractic school. Upon discussion of the misdemeanor with Dr. Brown who attended the meeting, Dr. Ratcliff made a motion, seconded by Ms. Fitzgerald, to accept Dr. Brown's application pending receipt of court documentation within thirty (30) days. The motion carried.

The board reviewed the application of Staten Metsker, D.C. whose Utah Chiropractic license was suspended in June 2004 for failing to submit to an examination ordered by the board due to a domestic violence charge, violation of a protective order and a judgment from a property owner. Upon discussion of the charges with Dr. Metsker who attended the meeting, Dr. Williams made a motion, seconded by Dr. Massey, to have Dr. Metsker provide a copy of his evaluation and information that the protective order has been expunged for review at the August 2006 meeting. The motion carried.

Ratify new licensees

Dr. Williams made a motion, seconded by Dr. Massey, to ratify the following list of Chiropractic Examiners, Chiropractic X-Ray Technologists and Chiropractic Therapy Assistants for licensure:

Chiropractic Examiners

Michael Allen Bibb, D.C.
James Wade Bolton, D.C.
Jessica Briere, D.C.
Marco Enrique Castaneda, D.C.
Kevin James Gocha, D.C.
Gillian Brooke Guin, D.C.
Jared Stephen Hathaway, D.C.
Jerald L. Jones, D.C.
Murray D. McKinnon, D.C.
Andrea Grace Shakarian, D.C.
Jesse Alan Shakarian, D.C.
Lolita G. Spears, D.C.

Chiropractic X-Ray Technologists

Jennifer Lynn McGaughy

Chiropractic Therapy Assistants

Cassidy Jade Anderson
Shauntrell L. Austin
Miranda L. Manderson
Jennifer Lynn McGaughy
Melissa Dawn Mitchell

**Wanda Pico
Janet Frazier Riley
Amy Rushing-McDowell
Eva Marie Sherrick
Leah Sue West
Alisa Marie Williams**

The motion carried.

Dr. Williams made a motion, seconded by Dr. Massey, to ratify the following list of Chiropractic Therapy Assistants for reinstatement:

**Carol Charlene Chamberlain
Tabitha Joy Crippen
Elizabeth Ann Hancock
Connie Ann Headrick
Cynthia Ann Smelser
Allison A. Totty**

The motion carried.

With no other board business to conduct Dr. Williams made a motion, seconded by Dr. Kelton, to adjourn at 11:20 a.m. The motion carried.

Ratified by the Board of Chiropractic Examiners on August 31, 2006